

Affidavit

No. AM2014/305

Fair Work Commission

2014 Four Yearly Review of Modern Awards – Penalty Rates

Re Application by: The Australian Industry Group

Affidavit of: David Eagles

Address: 319 Norton Promenade, Dalyellup, Western Australia

Occupation: Director

Date:

I, David Eagles of 319 Norton Promenade, Daleyellup, in the State of Western Australia, Director, say on oath:

1. I make this affidavit based on my own knowledge, information and belief unless otherwise stated. Where I make statements based on information provided to me, I identify the source of that information and otherwise believe it to be true and correct.
2. I am a director and the company secretary of Eyrie Holdings Pty Ltd (**Eyrie Holdings**). I have held these positions since 10 September 2009.
3. Eyrie Holdings is a franchisee under the McDonald's franchise system operated by McDonald's Australia Limited. As at the date of this statement, Eyrie Holdings operates the following two franchised McDonald's stores in Bunbury, Western Australia:

Store name / location	Operated by Eyrie Holdings since
Pennant Lot 69, Bunbury, Western Australia (Bunbury Store)	28 February 2014
Part Lot 140 Bussell Highway, Carey Park, Western Australia (Bunbury South Store)	28 February 2014

4. The Bunbury Store is located next to the Bunbury Forum shopping centre which is located at 63 Sandridge Road, East Bunbury, Western Australia. The Bunbury South Store is located next to the Parkes Shopping Centre which is located at Brittain Road, Carey Park, Western Australia.
5. My wife Trina and I work at both stores. I am responsible for the operational management, administration and business planning for each of the stores. Trina performs human resources functions and staff training at each of the stores.

Company Operations

6. Eyrie Holdings and McDonald's uses the metime system to record various pieces of information about employees who work for Eyrie Holdings. For the purposes of this statement, I directed Scott Paterson, Human Resources Business Partner at McDonald's, to generate a spreadsheet using the metime system which set out various data about employees of Eyrie Holdings, such as age, length of service, classification and employment status. Mr Paterson did so on and on 16 July 2015 sent me the spread sheet.



Exhibited to this statement and marked "Confidential Exhibit DE-1" is a copy of this spreadsheet.

7. Based on the confidential spreadsheet exhibited at DE-1, as at 16 July 2015, Eyrie Holdings employed the following numbers of employees to operate its stores:

Store name / location	Number of Employees
Bunbury Store	144
Bunbury South Store	129
Total	273

8. Based on the confidential spreadsheet exhibited at DE-1, as at 16 July 2015, Eyrie Holdings employed employees in the following classifications under *McDonald's Australia Enterprise Agreement 2013 (McDonald's EA)* (which I note does not contain a Level 1 classification):

Store	Level 2	Level 3	Level 4	Total
Bunbury Store	132	5	7	144
Bunbury South Store	114	7	8	129
Total	246	12	15	273

9. Based on the confidential spreadsheet exhibited at DE-1 as at 16 July 2015, Eyrie Holdings employed the following numbers of males and females:

Males	Females
114	159
Total	273

10. Based on the confidential spreadsheet exhibited at DE-1, as at 16 July 2015, Eyrie Holdings employed the following number of employees as casual, part-time and full time:

Store	Casual	Part-time	Full-time	Total
Bunbury Store	127	7	11	145
Bunbury South Store	105	9	14	128
Total	232	16	25	273

11. On my calculations, as at 16 July 2015, 232 of 273 of employees of Eyrie Holdings were casuals.

12. I regard:

- a casual employee as an employee who works irregular hours of work;
- a part time employee as an employee who does have regular hours of work but less hours than a full time employee; and
- a full time employee who works 38 hours every week.

13. Based on the confidential spreadsheet exhibited at DE-1, as at 16 July 2015, the ages of employees employed by Eyrie Holdings were:

Age	Casual	Part-time	Full-time	Total
14 to 17 Years				
Bunbury Store	62	1	1	64
Bunbury South Store	52	1	1	54
Total aged 14 to 17 years	114	2	2	118
18 to 24 years				
Bunbury Store	29	8	11	48
Bunbury South Store	46	2	3	51
Total aged 18 to 24 years	75	10	14	99
25 years or older				
Bunbury Store	16	2	7	25
Bunbury South Store	17	6	8	31
Total aged 25 years or older	33	8	15	56

14. When prospective employees apply for employment with McDonald's, they are required to (and do) identify if they are students as part of the application process under the metime system. For the purposes of this statement, on approximately 16 July 2015 I used the metime system to manually check which of Eyrie Holdings' employees had identified themselves as being students during the application process. Based on my review of the metime system, as at 16 July 2015, the following employees of Eyrie Holdings were students:

Age	Casual	Part-time	Full-time	Total
14 to 17 Years				
Bunbury Store	56	0	0	56
Bunbury South Store	43	0	0	43
Total aged 14 to 17 years	99	0	0	99
18 to 24 years				
Bunbury Store	21	6	0	27
Bunbury South Store	15	9	0	24
Total aged 18 to 24 years	36	15	0	51

Age	Casual	Part-time	Full-time	Total
25 years or older				
Bunbury Store	0	0	0	0
Bunbury South Store	1	0	0	1
Total aged 25 years or older	1	0	0	1

15. On my calculations, 99 of 118 employees of Eyrie Holdings aged 14 to 17 years were students as at 16 July 2015.
16. Employees of Eyrie Holdings are required to (and do) enter their long-term availabilities into the metime system. For the purposes of this statement, I used the metime system to generate "Employee Availability Reports" as at 31 May 2015. The Employee Availability Reports are reports generated by the metime system which set out what each employee has stated is their long term availabilities in the metime system. Exhibited to this statement and marked "**Confidential Exhibit DE-2**" is a copy of the Employee Availability Reports.
17. Based on the confidential spreadsheet exhibited at DE-1, as at 16 July 2015, the length of service of employees of Eyrie Holdings was:

Age	Less Than One Years' Service	One More Than One Year But Less Than Three Years' Service	More Than Three Years Service
Casual Employees 14 to 17 Years			
Bunbury Store	44	14	0
Bunbury South Store	36	9	0
Casual Employees 18 to 24 Years			
Bunbury Store	27	11	6
Bunbury South Store	34	11	1
Part Time Employees 14 to 17 Years			
Bunbury Store	0	0	0
Bunbury South Store	0	0	0
Part Time Employees 18 to 24			
Bunbury Store	2	1	1
Bunbury South Store	0	2	0

Typical Operations of Eyrie Holdings

18. Each day, customers of Eyrie Holdings order food from the menu board, such as Big Macs, cheeseburgers, fries, coffee and soft drinks at a counter in each of the Stores. Workers of



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Eyrie Holdings prepare the food, and other workers of Eyrie Holdings sell the food to the customers.

19. In each of the stores, there is also a drive through service, where customers drive their cars through a customer drive. As part of this process, Eyrie Holdings has engaged employees to take the drive through orders, take money at the drive through window and provide customers with their orders at another drive through window.

Saturday Rostering

20. As a franchisee of McDonald's, Eyrie Holdings has access to McDonald's "My Restaurant" database, which is a database whereby franchisees can generate various reports, including sales reports and weekly shift reports. For the purposes of this statement, I used the MyRestaurant database to generate weekly shift reports for the two stores for May 2015. A weekly shift report is a report which sets out hours worked by Level 2 and Level 3 employees for that particular week. I then used the weekly shift reports for May 2015 and the manager rosters for the Level 4 employees to compile a range of data about the Saturday operations of both stores during May 2015. I regard the month of May to be typical of Saturday operations at both stores. I then compared this data against the spreadsheet exhibited at DE-1 and the employee availability reports exhibited at DE-2 to provide further analysis with respect to the classifications and employment status of employees rostered to work on Saturdays. Exhibited to this statement and marked "Confidential Exhibit DE-3" is a copy of the weekly shift reports. Exhibited to this statement and marked "Confidential Exhibit DE-4" is a copy of the manager rosters.
21. Based on the weekly shift reports exhibited at DE-3 and the manager rosters exhibited at DE-4, during the month of May 2015, Eyrie Holdings engaged on average the following number of employees on Saturdays:

Store	Numbers of Employees Rostered on Saturday
Bunbury Store	45
Bunbury South Store	52
Total	97

22. Based on the confidential spreadsheet exhibited at DE-1, the weekly shift reports exhibited at DE-3 and the manager rosters exhibited at DE-4, during the month of May 2015, the classifications of the employees rostered to work on Saturdays was as follows:

Store	Level 2	Level 3	Level 4	Total
Bunbury Store	35	4	6	45
Bunbury South Store	42	4	6	52
Total	77	8	12	97

23. Based on the confidential spreadsheet exhibited at DE-1 and the weekly shift reports exhibited at DE-3, the number of Level 2 employees who worked on Saturdays during the month of May 2015 who were casual, part time or full time was:

Store	Casual	Part Time	Full Time
Bunbury Store	31	4	0

Store	Casual	Part Time	Full Time
Bunbury South Store	37	5	0
Total	68	9	0

24. Based on the confidential spreadsheet exhibited at DE-1 and the weekly shift reports exhibited at DE-3, the number of Level 3 employees who worked on Saturdays during May 2015 who were casual, part time or full time was:

Store	Casual	Part Time	Full Time
Bunbury Store	2	2	0
Bunbury South Store	2	2	0
Total	4	4	0

25. Based on the confidential spreadsheet exhibited at DE-1 and the manager rosters exhibited at DE-4, the number of Level 4 employees who worked on Saturdays during May 2015 who were casual, part time or full time was:

Store	Casual	Part Time	Full Time
Bunbury Store	1	1	4
Bunbury South Store	0	1	5
Total	1	2	9

26. Based on the weekly shift reports exhibited at DE-3, during the month of May 2015 the following number of Level 2 employees worked the following approximate shifts and approximate shift durations:

Store	4 Hours	6 Hours	8 Hours	11 Hours
Bunbury Store	17	8	8	2
Bunbury South Store	20	9	11	2
Total	37	17	19	4

27. Based on my calculations, 37 of 77 Level 2 employees worked a shift of four hours.
28. Based on the weekly shift reports exhibited at DE-3, during the month of May 2015, the following number of Level 3 employees worked the following approximate shifts and approximate shift durations:

Store	4 Hours	6 Hours	8 Hours	11 Hours
Bunbury Store	0	1	3	0
Bunbury South Store	0	1	3	0
Total	0	2	6	0



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29. Based on the managers rosters reports exhibited at DE-4, during the month of May 2015, the following number of Level 4 employees worked the following approximate shifts and approximate shift durations:

Store	4 Hours	6 Hours	8 Hours	11 Hours
Bunbury Store	0	1	3	1
Bunbury South Store	0	1	5	1
Total	0	2	8	2

Saturday Sales

30. Based on my experience in working at each of the stores, I have observed that Saturdays are the busiest days of the week and the days which the stores generate the most amount of sales. I estimate that Saturdays are about 50 per cent busier than the average week day at each of the stores.

Sunday Rostering

31. For the purposes of this statement, I used the weekly shift reports exhibited at DE-3 and the manager rosters exhibited at DE-4 to compile a range of data about the Sunday operations of both stores during May 2015. I regard the month of May to be typical of Sunday operations at both stores. I then compared this data against the confidential spreadsheet exhibited at DE-1 and the employee availability reports exhibited at DE-2 to provide further analysis with respect to the classifications and employment status of employees rostered to work on Saturdays.
32. Based on the weekly shift reports exhibited at DE-3 and the manager rosters exhibited at DE-4, during the month of May 2015, Eyrie Holdings engaged on average the following number of employees on Sundays:

Store	Numbers of Employees Rostered on Sunday
Bunbury Store	39
Bunbury South Store	45
Total	84

33. Based on the confidential spreadsheet exhibited at DE-1 and the weekly shift reports exhibited at DE-3, during the month of May 2015, the classifications of the employees rostered to work on Sundays were:

Store	Level 2	Level 3	Level 4	Total
Bunbury Store	30	4	5	39
Bunbury South Store	36	4	5	45
Total	66	8	10	84

34. Based on the confidential spreadsheet exhibited at DE-1 and the weekly shift reports exhibited at DE-3, the number of Level 2 employees who worked on Sundays during May 2015 who were casual, part time or full time was:

Store	Casual	Part Time	Full Time
Bunbury Store	25	2	3
Bunbury South Store	31	3	2
Total	56	5	5

35. Based on the confidential spreadsheet exhibited at DE-1 and the weekly shift reports exhibited at DE-3, the number of Level 3 employees who worked on Sundays during May 2015 who were casual, part time or full time was:

Store	Casual	Part Time	Full Time
Bunbury Store	1	1	1
Bunbury South Store	2	1	2
Total	3	2	3

36. Based on the spreadsheet exhibited at DE-1 and the manager rosters exhibited at DE-4, of Level 4 employees who worked on Sundays during May 2015 who were casual, part time or full time was:

Store	Casual	Part Time	Full Time
Bunbury Store	0	1	4
Bunbury South Store	0	1	4
Total	0	2	8

37. Based on the weekly shift reports exhibited at DE-3, during May 2015, Level 2 employees worked the following approximate shifts and approximate shift durations:

Store	4 Hours	6 Hours	8 Hours	11 Hours
Bunbury Store	18	6	5	1
Bunbury South Store	21	8	6	1
Total	39	14	11	2

38. Based on my calculations, 39 of 66 Level 2 employees perform shifts of four hours.
 39. Based on the weekly shift reports exhibited at DE-3, during May 2015, Level 3 employees worked the following approximate shifts and approximate shift durations:

Store	4 Hours	6 Hours	8 Hours	11 Hours
Bunbury Store	0	1	3	0

Store	4 Hours	6 Hours	8 Hours	11 Hours
Bunbury South Store	0	1	3	0
Total	0	2	6	0

40. Based on the manager rosters exhibited at DE-4, during May 2015, Level 4 employees worked the following approximate shifts and approximate shift durations:

Store	4 Hours	6 Hours	8 Hours	11 Hours
Bunbury Store	0	0	5	0
Bunbury South Store	0	0	5	0
Total	0	0	10	0

Sunday Sales

41. Based on my experience in working at each of the stores, I have observed that Sundays are busier than the average week day at both of the stores in terms of the amount of sales generated. I estimate that Sundays are about 25 to 30 per cent busier than the average week day at each of the stores.

Evening Rostering

42. For the purposes of this statement, I used the weekly shift reports exhibited at DE-3 and the manager rosters exhibited at DE-4 to calculate the average number of employees that were rostered to work at each of the stores between 9 pm and 10 pm on weekdays during May 2015.
43. Based on the weekly shift reports exhibited at DE-3 and the manager rosters exhibited at DE-4, during May 2015, the number of employees rostered to work at each of the stores between 9 pm and 10 pm on a weekdays was:

Store	Number of Employees
Bunbury Store	8
Bunbury South Store	12
Total	20

Systems for Employees to Express Preferred Working Hours

44. When employees apply for a job with Eyrie Holdings they are required to apply via the metime system. As part of the application process, potential employees enter their availability to work into the metime system. Eyrie Holdings will only roster employees for shifts which they have stated they have availability for.
45. If employees wish to change their availability, the process they follow depends on whether the change they make is temporary or long-term. For a temporary change, employees simply inform their supervisor or enter it into a book which is kept at each of the restaurants.
46. Employees who want to make a permanent change to their availability complete a "Change of Availability Form" which they obtain from their supervisor. They then hand that form back to the relevant supervisor at the time who would then provide that form to a Rostering Manager. The Rostering Manager would then enter the availability data into metime.

Permanent employees are required to obtain permission from their manager to change their permanent availabilities. Casual employees do not have to obtain permission.

Health Impact of Weekend Work

47. I work in both stores most days of the week. I have not observed any greater rate of injuries in either store on Saturdays or Sundays in comparison to weekdays.

Career vs Non-career workers

48. In my role as Director of Eyrie Holdings I have observed that employees can be categorised under one of the following types of groups:
- (a) employees in their first job (**Group A**);
 - (b) the future leaders of the stores participating in Eyrie Holding's "Future Leaders" program (**Group B**); and
 - (c) managers (**Group C**).
49. I describe Group A as "non-career workers" and Group B and Group C as "career workers". With respect to "non-career workers", I am referring to employees that either view employment with Eyrie Holdings as something they do while they do something else (such as study) or as a stepping stone to other career opportunities. With respect to "career workers", I am referring to employees who view employment with Eyrie Holdings as a long term prospect and who are either committed to progressing in their career with Eyrie Holdings or are satisfied with the position that they hold with Eyrie Holdings.
50. I estimate that about 80 to 90 per cent of Eyrie Holdings employees are categorised under Group A. I have observed that Group A employees have the following characteristics:
- (a) they are younger (under 21 years of age);
 - (b) they are attending school or university;
 - (c) they have limited availability to work during the week (as they are attending school or university); and
 - (d) they are engaged as casual employees.
51. There are approximately 20 employees across both stores who fall under the Group B category who are participating in Eyrie Holdings Future Leaders program. Employees participating in this program have to apply in order to participate in the program. Once accepted, they are provided with training which is designed to fast track them to management positions within Eyrie Holdings. I have observed that these employees have the following characteristics:
- (a) they are in their early 20s;
 - (b) they are very ambitious about progressing in their career at McDonald's;
 - (c) they are available to work almost the entire time (as they want to make a good impression to work); and
 - (d) they are not studying;
 - (e) they are engaged as either full time or part time employees.
52. I estimate that approximately 10 per cent of Eyrie Holdings fall under the Group C category. I have observed that these employees have the following characteristics:
- (a) they are over 21 years of age;
 - (b) they are available to work the majority of the time;
 - (c) they are not studying; and
 - (d) the majority are engaged as full time employees (although there are some part time).



Complaints about weekend work

53. Eyrie Holdings maintains the following systems for receiving complaints from employees and/or for employees to raise concerns with their supervisor:
- (a) initially, employees are expected to raise their complaint with the management team at the stores;
 - (b) if the complaint is serious enough, it will then be escalated to the restaurant manager for each of the store; and
 - (c) the most serious incidents get escalated to either my wife or myself.
54. I am not aware of Eyrie Holdings receiving any complaints from employees about weekend work. I have not personally received any complaints about weekend work. Given my role, I expect to be informed of such complaints and I have not been informed of such complaints.

Sworn by the deponent

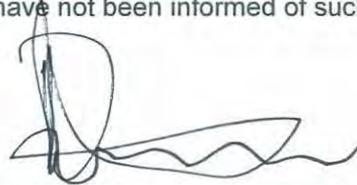
at *BUNBURY*

in Western Australia

on 10 August 2015

Before me: *Ian John Richardson*
Justice of the Peace
for the state of Western Australia

IJR
..... 28407



Signature of deponent

Signature of witness

Australian Legal Practitioner